

Oversight of the Office of the Information Commissioner

Report No. 35

Legal Affairs and Community Safety Committee

August 2013

Legal Affairs and Community Safety Committee

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Deputy Chair	Mr Peter Wellington MP, Member for Nicklin
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Acknowledgements

The Committee acknowledges the assistance provided by the Acting Information Commissioner and her staff.

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Abbreviations

Attorney-General	The Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice
Committee	Legal Affairs and Community Safety Committee
Department	Department of Justice and Attorney-General
IP Act	<i>Information Privacy Act 2009</i>
OIC	Office of the Information Commissioner
RTI Act	<i>Right to Information Act 2009</i>

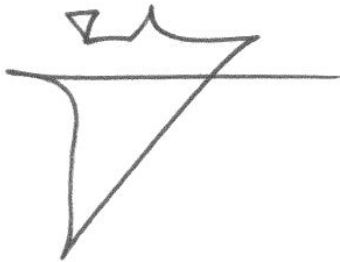
Chair's foreword

The Legal Affairs and Community Safety Committee (Committee) has oversight responsibility for the Office of the Information Commissioner. This report provides information regarding the performance of the Office of the Information Commissioner and its functions under the *Right to Information Act 2009* and the *Information Privacy Act 2009*.

The Committee met with the Acting Information Commissioner, Ms Clare Smith, the Right to Information Commissioner, Ms Jenny Mead and the Acting Privacy Commissioner, Mr Lemm Ex on Wednesday, 17 April 2013. The Committee also reviewed the Office of the Information Commissioner's Annual Report for 2011-2012 which was tabled in the Legislative Assembly on 21 August 2012.

On behalf of the Committee, I thank the officers and staff of the Office of the Information Commissioner who assisted the Committee in conducting this oversight inquiry.

I commend this Report to the House.

A handwritten signature in black ink, appearing to be 'Ian Berry', written over a horizontal line.

Ian Berry MP

Chair

Recommendations

Recommendation 1

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The Committee recommends the Attorney-General and Minister for Justice update the Legislative Assembly on the status of the current vacant senior executive positions at the Office of the Information Commissioner and finalise the outstanding recruitment and selection processes as soon as possible.

Recommendation 2

4

The Committee recommends the Attorney-General and Minister for Justice confirm the current status of the strategic review of the Office of the Information Commissioner under the *Right to Information Act 2009* and the reasons for the delay on the appointment of a reviewer.

Recommendation 3

5

The Committee recommends the Attorney-General and Minister for Justice confirm the current status of the reviews of the *Right to Information Act 2009* and *Information Privacy Act 2009*, which under the relevant sections of those Acts, were required to start no later than two years after their commencement (1 July 2011).

1. Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (the Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The Committee's primary areas of responsibility include:

- Department of Justice and Attorney-General;
- Queensland Police Service; and
- Department of Community Safety.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

The Committee also has oversight responsibilities for the Office of the Information Commissioner, the Office of the Queensland Ombudsman, the Electoral Commissioner and the Criminal Organisation Public Interest Monitor.

This report is made in relation to the Committee's statutory oversight responsibility of the Office of the Information Commissioner (OIC).

1.2 Purpose and functions of the Office of the Information Commissioner

The OIC is an independent statutory body under the *Right to Information Act 2009* (RTI Act) and the *Information Privacy Act 2009* (IP Act) whose functions include promoting access to government-held information and protecting people's personal information held by the public sector.²

In addition:

*OIC provides information and assistance to support Queensland public sector agencies to comply with the law, reviews agency decisions regarding access and amendment applications, deals with privacy complaints and makes decisions on whether an agency's privacy obligations can be waived or modified in the public interest.*³

1.3 Committee's responsibilities regarding the Office of the Information Commissioner

The Committee's oversight role of the OIC is set out in the RTI Act and the IP Act. Under those Acts, the Committee's functions include:

- to monitor and review the performance by the Information Commissioner of the Commissioner's functions under the RTI Act and IP Act;
- to report to the Legislative Assembly on any matter concerning the Information Commissioner, the Commissioner's functions or the performance of the Commissioner's functions that the Committee considers should be drawn to the Legislative Assembly's attention;

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

² Office of the Information Commissioner, www.oic.qld.gov.au/about, accessed 3 June 2013.

³ Office of the Information Commissioner, www.oic.qld.gov.au/about, accessed 3 June 2013.

- to examine each annual report tabled in the Legislative Assembly by the Information Commissioner under the RTI Act and the IP Act and, if appropriate, to comment on any aspect of the report and to make recommendations;
- to report to the Legislative Assembly any changes to the functions, structures and procedures of the OIC the Committee considers desirable for the more effective operation of the RTI Act and the IP Act; and
- any other functions conferred on the Committee by the RTI Act and IP Act.⁴

Statutory office holders

The Committee must be consulted on the selection process for appointment, and the appointment of, a person as Information Commissioner, Right to Information Commissioner, or Privacy Commissioner.⁵

The Committee notes the position of Information Commissioner has been vacant since 9 August 2012 pending the outcome of a selection process conducted by the Department of Justice and Attorney-General (Department) and appointment by the Governor-in-Council. The position was advertised on 12 July 2012.⁶

In the interim, the role has been filled on an acting basis; until 8 February 2013 by Ms Jenny Mead and after that by Ms Clare Smith.⁷ Ms Mead and Ms Smith hold substantive positions as the Right to Information Commissioner, sharing the workload of the position on a part-time basis.⁸ At the Committee's recent Estimates Hearing, the Attorney-General and Minister for Justice (Attorney-General) responded to a query from the Committee on the status of the appointment as follows:

*We have gone through an employment process where we are looking at potential candidates. I suspect in the not-too-distant future we will be able to make an announcement on that.*⁹

The Committee also notes the position of Privacy Commissioner has been filled on an acting basis by Mr Lemm Ex since December 2011.¹⁰

While the Committee has no concerns about the skill levels and abilities of the staff currently appointed to the acting roles within the OIC, the Committee considers that for the purposes of certainty and direction within the OIC, it would be preferable for these vacant statutory positions to be filled on a permanent basis as quickly as possible.

The Committee considers generally, that there may be some reluctance by staff in acting roles to make strategic decisions on behalf of an agency when the position is about to be filled on a permanent basis in the near future. The longer this goes on, the more uncertainty this creates, possibly leading to difficulties in the ongoing operations of an agency.

The Committee has not seen any direct evidence of problems arising within the operation of the OIC due to the acting arrangements and commends the senior executive staff for their efforts over the past year. However the Committee considers that steps should be taken to finalise the outstanding selection process as swiftly as possible.

⁴ *Right to Information Act 2009*, section 189; *Information Privacy Act 2009*, section 195.

⁵ *Right to Information Act 2009*, section 135 (Information Commissioner); section 151 (Right to Information Commissioner); *Information Privacy Act 2009*, section 145 (Privacy Commissioner). Both Acts provide that the Committee is not consulted on the re-appointment of a person as Information Commissioner, Right to Information Commissioner or Privacy Commissioner.

⁶ Office of the Information Commissioner, www.oic.qld.gov.au/about/our-organisation, accessed 3 June 2013.

⁷ Letter from Ms Jenny Mead, Acting Information Commissioner, 8 February 2013.

⁸ Office of the Information Commissioner, www.oic.qld.gov.au/about/our-organisation, accessed 3 June 2013.

⁹ *Transcript of Proceedings (Hansard)*, Estimates Hearing, Legal Affairs and Community Safety Committee, 18 July 2013, page 27.

¹⁰ Office of the Information Commissioner, www.oic.qld.gov.au/about/our-organisation, accessed 3 June 2013.

Recommendation 1

The Committee recommends the Attorney-General and Minister for Justice update the Legislative Assembly on the status of the current vacant senior executive positions at the Office of the Information Commissioner and finalise the outstanding recruitment and selection processes as soon as possible.

Strategic Review of the Office of the Information Commissioner

This year (2013) will mark the first strategic review of the OIC. Under the RTI Act, a strategic review must be conducted within four years of the commencement of the relevant section of the RTI Act,¹¹ followed by further strategic reviews of at least every five years.¹² The relevant start date is 1 July 2009 which means the initial strategic review must be conducted by 1 July 2013.

A strategic review includes consideration of the Information Commissioner's functions and the performance of those functions to assess whether they are being performed economically, effectively and efficiently.¹³

As is required under the RTI Act, the Committee must be consulted on the appointment of the reviewer and the terms of reference before the strategic review can be conducted.¹⁴ The Committee will also have involvement at the end of the process as once the report has been tabled in the Legislative Assembly, it is referred to the Committee for examination.¹⁵

Both the Committee and the OIC have had the opportunity to comment on the draft Terms of Reference for the strategic review, circulated in January 2013 by the Department.¹⁶ The OIC considered that it was adequately consulted and agreed the terms of reference appeared '*comprehensive and appropriate*'.¹⁷ Similarly, the Committee also considered the draft Terms of Reference were appropriate and provided no further specific comments to the Attorney-General.¹⁸ Some operational issues identified by the OIC associated with the impending strategic review are discussed later in this Report.

The OIC has stated it anticipates the strategic review will begin in the new financial year.¹⁹ At the time of writing this report, the 2012-2013 financial year has just ended, and the Committee has not yet been consulted about the appointment of the reviewer.²⁰ It appears therefore, that the strategic review will not be conducted within the required period of four years.

¹¹ *Right to Information Act 2009*, section 186(2).

¹² *Right to Information Act 2009*, section 186(2) and (3).

¹³ *Right to Information Act 2009*, section 186(9).

¹⁴ *Right to Information Act 2009*, section 186(7).

¹⁵ *Right to Information Act 2009*, section 188(7) and section 189(e).

¹⁶ Office of the Information Commissioner, Answers to Questions on Notice, March 2013, pages 20-21; Letter to the Legal Affairs and Community Safety Committee from the Attorney-General and Minister for Justice, 9 January 2013.

¹⁷ Office of the Information Commissioner, Answers to Questions on Notice, March 2013, page 20.

¹⁸ Letter from the Committee to the Attorney-General and Minister for Justice, 25 January 2013.

¹⁹ Office of the Information Commissioner, Answers to Questions on Notice, March 2013, page 21.

²⁰ *Right to Information Act 2009*, section 186(7).

The Committee therefore requests the Attorney-General to update the House on the status of the strategic review.

Recommendation 2

The Committee recommends the Attorney-General and Minister for Justice confirm the current status of the strategic review of the Office of the Information Commissioner under the *Right to Information Act 2009* and the reasons for the delay on the appointment of a reviewer.

1.4 Legislative reviews

In addition to the strategic review of the Office of the Information Commissioner, the responsible Minister must commence reviews of the relevant legislation (RTI Act and IP Act) no later than two years after their commencement, and table reports of those reviews in the Legislative Assembly.

The objects of the reviews as set out in the Acts are to:

- decide whether the primary objects of the RTI Act and IP Act remain valid;
- decide whether the RTI Act and IP Act are meeting their primary objects;
- decide whether the provisions of the RTI Act and IP Act are appropriate for meeting their primary objects; and
- investigate any specific issue recommended by the Minister or Information Commissioner.²¹

The RTI Act and IP Act both substantively commenced on 1 July 2009. Based on information provided to the Committee during both this year's and last year's oversight inquiry, it does not appear this review has progressed significantly in the last 2-3 years.

The following is taken from the Committee's previous oversight report:

The Committee noted the Information Commissioner's response to its Questions on Notice that her office was consulted by the Department of Justice and Attorney-General on draft terms of reference for the review in December 2010. At the same time, the Information Commissioner also advised that she:

... wrote to the Director-General of the Department of Justice and Attorney-General in June 2011 to offer to assist the review by commenting on and providing advice on the scope of any issue, options to address issues and possible unintended consequences of any draft amendments. The Information Commissioner also recommended a number of specific issues be investigated during the course of the review to improve the effectiveness and efficiency of the legislation.²²

In November 2011, it was reported the Department would release a discussion paper for public comment, although no time frame was stipulated.²³

²¹ *Right to Information Act 2009*, section 183; *Information Privacy Act 2009*, section 192.

²² Legal Affairs and Community Safety Committee, Report No. 7, *Oversight of the Office of the Information Commissioner*, August 2012, page 3.

²³ *Attorney-General considering change to Right To Information law to keep politicians safe*, 16 November 2012, page 7, accessible at www.couriermail.com.au/news/queensland/attorney-general-considering-change-to-right-to-information-law-to-keep-politicians-safe/story-e6freoof-1226518140699.

As part of the current oversight process, the OIC provided:

*With the benefit of almost two years further experience in the administration of the legislation, OIC provided the Attorney-General and Minister for Justice with a more targeted list of issues for consideration on 15 March 2011.*²⁴

More recently, it was reported that media efforts to contact the Attorney-General to find out what progress the Government had made on the review resulted in ‘no time frame, no information on progress or potential changes. Nothing.’²⁵

The Committee is not aware of the current status of this review. Given the trigger for the review has well and truly passed, and other events are now likely to impact on this review (including the Government’s Open Data Reforms and the OIC’s impending Strategic Review – both discussed in more detail below), the Committee seeks an update from the Attorney-General as to the status of the legislative reviews.

Recommendation 3

The Committee recommends the Attorney-General and Minister for Justice confirm the current status of the reviews of the *Right to Information Act 2009* and *Information Privacy Act 2009*, which under the relevant sections of those Acts, were required to start no later than two years after their commencement (1 July 2011).

²⁴ Office of the Information Commissioner, Answers to Questions on Notice, March 2013, page 7.

²⁵ *Attorney-General Jarrod Bleijie avoids time frame for review of Right to Information Act*, 15 June 2013, accessible at <http://www.heraldsun.com.au/news/national/attorneygeneral-jarrod-bleijie-avoids-time-frame-for-review-of-right-to-information-act/story-fnii5v70-1226664031280>.

2. Oversight of the Information Commissioner

2.1 Process followed by the Committee

In conducting its oversight functions of the Information Commissioner, the Committee followed the process it adopted previously.

That process included:

- Questions on Notice being provided to the Information Commissioner with a request for responses to be provided prior to the meeting;
- a public hearing with the Information Commissioner to discuss her responses to the Questions on Notice and to ask questions without notice; and
- providing this Report.

On 15 February 2013, the Committee provided Questions on Notice to the Information Commissioner.

The Committee received the Acting Information Commissioner's response to its Questions on Notice on 28 March 2013,. Further information relating to one of those responses was also subsequently provided. Both items of correspondence are attached at **Appendix A**.

On Wednesday 17 April 2013, the Committee held a public hearing with the Acting Information Commissioner to discuss the responses to the Questions on Notice, the Commissioner's functions and performance under the RTI Act and IP Act and the OIC *Annual Report 2011-2012*.

In attendance with the Acting Information Commissioner were:

- Ms Jenny Mead, Right to Information Commissioner; and
- Mr Lemm Ex, Acting Privacy Commissioner.

A copy of the transcript of the public hearing is available on the Committee's website.²⁶

²⁶

www.parliament.qld.gov.au/work-of-committees/committees/LACSC

3. Committee Consideration

The Committee is pleased with the performance of the OIC reviewed to date, and acknowledges the efforts of Ms Mead and Ms Smith in their acting capacity as Information Commissioner.

Given that it has been four years since the RTI Act commenced, it is timely that a strategic review of the OIC takes place to ensure the Commissioner's functions and performance of those functions continue to meet the Act's objectives and needs of stakeholders.

Outlined below are some key areas which the Committee would like to highlight. In relation to the performance information about privacy complaints, the Committee considers it remains important for the OIC to continue to focus on ways to reduce the number of privacy complaints it declines to deal with because they are not technically compliant with the IP Act. The Committee remains concerned about the relatively high number, irrespective of trends in other jurisdictions.

Another concern that arose during the Committee's oversight inquiry relates to the wide ranging impact of a recommendation of the Independent Advisory Panel into the Review of the Crime and Misconduct Act and Related Matters. This is discussed in further detail below.

The Committee is pleased that the OIC has taken a role in the Open Data Reforms recently introduced by the Government and considers the input of the specialist staff at the OIC will be invaluable to the conduct of this initiative.

The Committee also takes this opportunity to express its continued support of the OIC in promoting government accountability, openness and transparency.

3.1 Performance

In relation to the performance of the OIC for 2011-2012, the Committee notes:

- There were similarly high levels of demand for external review in 2011-2012 compared to the previous year. In 2011-2012, the OIC received 404 external review applications, compared to 412 in 2010-2011.²⁷
- Another record number of file closures by the OIC. A total of 457 applications were closed by the OIC in 2011-2012 which is significantly higher than last year's record of 394 closures.²⁸ This increase has been '*attributed primarily to increased temporary resources, capitalisation on improved efficiencies in work practices, and the economy that comes from retained expertise due to low turnover and stable team structures.*'²⁹ The OIC anticipates that it will finalise between 400 and 430 applications in 2012-2013.³⁰
- An increase in the number of privacy complaints. In 2011-2012, the OIC received 61 complaints, which is almost double the number of complaints compared to last year.³¹ The Committee notes that more recently, there has been a slight decline in the number of complaints made to the OIC.³²
- The number of privacy complaints which were not technically compliant is still high. In 2011-2012, 32% of all complaints were not accepted. In 2010-2011 that figure was significantly higher at almost 80%, however, that may also be attributed to the fact that 2010-2011 was the first full year of operation for privacy complaints.³³ Some initial steps taken by the OIC to

²⁷ Office of the Information Commissioner, *Annual Report 2011-12*, pages 19 and 76.

²⁸ Office of the Information Commissioner, *Annual Report 2011-12*, page 18.

²⁹ Office of the Information Commissioner, *Annual Report 2011-12*, pages 17-18.

³⁰ Office of the Information Commissioner, *Answers to Questions on Notice*, March 2013, page 5.

³¹ Office of the Information Commissioner, *Annual Report 2011-12*, page 25.

³² Office of the Information Commissioner, *Answers to Questions on Notice*, March 2013, pages 10 and 14.

³³ Office of the Information Commissioner, *Annual Report 2010-11*, page 20.

reduce this 'error rate' has had promising results, and the OIC has identified other steps it has taken to improve the making and handling of privacy complaints.³⁴

- The number of open reviews at the end of 2011-2012 older than 12 months was two. This is less than the previous period. The OIC attributes this achievement to '*additional temporary resources, a continued emphasis on early resolution and efforts to project manage and prioritise older files during the reporting period.*'³⁵

3.2 Open Data Reforms

It is not surprising, having regard to previous views communicated by the OIC to the Committee about the importance of political and agency leadership in changing and improving the culture and release of information³⁶ that in her opening statement to the Committee on 17 April 2013, the Acting Information Commissioner '[recognised] the *Open Data Initiative promoted and driven by the Premier, Mr Campbell Newman, and Assistant Minister Ray Stevens which shows a clear commitment by the government to openness and accountability that is driven from the top.*'³⁷

As a testament to this recognition, the OIC informed the Committee that it has been contributing significantly to the Open Data Reforms by, for example:

- providing advice on key aspects of the reforms;
- developing practical tools to support implementation; and
- participating as a member in the Open Data Senior Officers Working Group.³⁸

Although the Acting Information Commissioner did not expect the Open Data Reform would impact on the workload of the OIC in the short term, she considered the initiative consistent with the RTI Act, as it promoted the proactive release of information, which would in turn reduce the administrative burden on an agency and reduce red tape for applicants.³⁹

The Committee also supports the Open Data Reforms through the proactive release of information and supports the OIC's approach and participation in the initiative. The Committee is confident that the involvement of the OIC in this initiative will assist the Government in realising these reforms.

3.3 Callinan/Aroney review of the CMC

When the OIC appeared before the Committee at the public hearing on 17 April 2013, the review of the *Crime and Misconduct Act 2001*⁴⁰ (CMC review) had been completed, although limited information had been made public at that stage. Included in the information that was made public, was the Executive Summary which included 17 recommendations.⁴¹ One of those recommendations was particularly relevant to the OIC:

Recommendation 10

The Right to Information Act ought to be amended to restrict Departments and agencies (including the Information Commissioner) from being required to give reasons for refusal to produce documents, the restriction to remain in place for 9 months. Reasons should only be

³⁴ Office of the Information Commissioner, Answers to Questions on Notice, March 2013, page 9.

³⁵ Office of the Information Commissioner, *Annual Report 2011-12*, page 21.

³⁶ Legal Affairs and Community Safety Committee, Report No. 7, *Oversight of the Office of the Information Commissioner*, page 4. See also, *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 20 June 2012, pages 4-5

³⁷ *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 17 April 2013, page 1.

³⁸ Office of the Information Commissioner, Answers to Questions on Notice, March 2013, page 3.

³⁹ *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 17 April 2013, pages 1-2 and 7.

⁴⁰ See www.justice.qld.gov.au/cmareview

⁴¹ See www.justice.qld.gov.au/data/assets/pdf_file/0003/178518/CMA_Review_Summary_Recommendations.pdf.

obligatory if and when the complaint results in criminal proceedings or proceedings in QCAT; or, the subject or subjects of a complaint, authorise in writing the publication or disclosure of the complaint. The exception to this would be if the Supreme Court earlier determines there to be a compelling public interest in the disclosure of the reasons. We have selected 9 months on the basis that by then the CMC should have completed any investigation it undertakes.

The excuse from the requirement to give reasons must be general because if it is confined to reasons in respect of a CMC investigation, then not giving reasons would immediately identify that the matter was under investigation by the CMC and defeat the purpose of the provision. We recognise that this is a far-reaching provision but cannot see any other solution that would prevent leakage of information about the existence, content or subject of a current complaint or investigation. The severity of the provision is tempered by two important qualifications that we recommend apply, namely that the embargo is limited to a 9 month period, and that it be subject to contrary order by the Supreme Court in situations of compelling public interest.

Similar amendments will be required to the Ombudsman Act.

At the meeting, the Committee asked the OIC what advice it had provided to the reviewers. The following exchange occurred:

Ms Smith: *We did not give any advice. We were written to at the outset by, I believe, counsel assisting that provided us with the terms of reference and asked us if we were prepared to make a submission. On looking at the terms of reference, we did not feel that there was a need to give any submissions. When I read the report and that particular recommendation I wrote to the Attorney-General the next day, noting that I had not had the opportunity to read the report and said that I was also aware that the government had not made a formal response to that particular recommendation, but that I would like to be able to assist if there is any consideration about that recommendation.*

Mr BYRNE: *How do you feel about the nine-month restriction associated with that recommendation?*

Ms Smith: *Again, I think it is probably premature, because I do not know what the government's view is in relation to that, but I would have concerns, yes.*

Mr BYRNE: *Right. You have not seen the full report, I assume?*

Ms Smith: *No.*

Mr BYRNE: *Right. I know it is difficult as you have not seen the report, but the whole concept of right to information and openness and accountability seems to me to be in some way skewed with this recommendation. Again, I have not seen the final report, as no-one in this room has, but it worries me personally.*

Ms Smith: *I also think that when they are considering the recommendation, if we are consulted there may be other means to minimise the concerns that the review indicated without having such a wide-ranging impact as what is recommended and that is why we welcome the chance to discuss that with the Attorney-General.⁴²*

⁴² Record of Proceedings (Hansard), Public Hearing, Legal Affairs and Community Safety Committee, 17 April 2013, page 4.

The Committee notes that the Government has ‘accepted in principle’ Recommendation 10 of the Callinan/Aroney Report and remarked:

The proposed amendment raises a number of important and complex matters requiring further and ongoing discussion with departments and agencies including the Office of the Information Commissioner.

*The Implementation Panel will provide advice about how the intention of the recommendation can best be achieved.*⁴³

Notwithstanding the Government’s acknowledgment that this recommendation raises important and complex matters, the Committee remains concerned about the possible wide ranging impact this recommendation would have, not only on the role of the OIC but also on the Government’s commitment to openness and accountability. As the Acting Information Commissioner alerted to, there may be alternate ways of achieving the intention of Recommendation 10.

The Committee strongly supports ongoing consultation by the Attorney-General and/or the Implementation Panel, as the body responsible for considering implementation of this recommendation, with the Office of the Information Commissioner and other departments and agencies, as foreshadowed in the Government’s response.

3.4 Future challenges

The OIC identified that it would face the following challenges over the next 12 months from March 2013:

- budget uncertainty with no decrease in applications for external review;
- possible legislative changes to processes and procedures; and
- commencement and completion of the strategic review of the OIC.⁴⁴

The first point has, to some extent, been resolved - at least in the short term. In its Answers to Questions on Notice, the OIC advised that it was waiting on a decision as to whether it could retain/carryover certain cash reserves.⁴⁵ At the hearing, the Committee was advised that Queensland Treasury would be approving the carry-over of funds until the completion of the legislative review. On this basis, the Acting Information Commissioner advised that the OIC ‘*can continue to meet its performance targets and standards for the next financial year*’.⁴⁶

The final two points can be considered together as these challenges relate to the impending legislative reviews and strategic review discussed in Part 1 above. Essentially, the OIC has assessed that it will need to make appropriate resources available to engage with and respond to the reviews, and any changes to legislation/processes/functions adopted at the completion of those reviews. For example, the OIC identified that it would need resources to prepare a response to a discussion paper expected to be released by the Department; suggest changes to legislation based on experience; revise guidelines and information sheets; provide training to OIC and agency staff as a result of any changes to processes and legislation; and provide documents and reports to the reviewer.⁴⁷

⁴³ Government Response, Parliamentary Crime and Misconduct Committee: Report No. 90 – Inquiry into the Crime and Misconduct Commission’s release and destruction of Fitzgerald Inquiry documents and Review of the *Crime and Misconduct Act 2001* and Related matters, by the Honourable Ian Callinan AC and Professor Nicholas Aroney: tabled 3 July 2013, pages 30-31.

⁴⁴ Office of the Information Commissioner, Answers to Questions on Notice, March 2013, pages 7-8.

⁴⁵ Office of the Information Commissioner, Answers to Questions on Notice, March 2013, page 7.

⁴⁶ *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 17 April 2013, page 3.

⁴⁷ Office of the Information Commissioner, Answers to Questions on Notice, March 2013, pages 7-8 and 21; *Record of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 17 April 2013, page 3.

The Committee is concerned that the non-progress or delay of these reviews may adversely impact on the ability of the OIC to appropriately plan its work priorities and resources.

The Committee considers that the recommendations in this Report will provide some assistance in that regard.

Appendix A

Written Responses to Questions on Notice

Office of the Information Commissioner
Queensland

Your ref: 11.9.2.c

28 March 2013

Mr Ian Berry
Chair
Legal Affairs and Community Safety Committee
Parliament House
BRISBANE QLD 4000



Dear Mr Berry

Please find enclosed Answers to the Questions on Notice received from the Legal Affairs and Community Safety Committee (the Committee) on 15 February 2013.

I as Acting Information Commissioner, together with Jenny Mead, the Right to Information Commissioner and Lemm Ex, the Acting Privacy Commissioner will attend before the Committee on Wednesday 17 April 2013 to discuss the progress of the Office of the Information Commissioner.

I also take the opportunity of enclosing the *Model Protocols for Queensland Government Departments on Reporting to Ministers and Senior Executive of Right to Information and Information Privacy Applications*. These protocols constitute a performance standard and take effect from 15 April 2013. They were developed after extensive consultation with other Queensland integrity bodies, all Directors-General of Queensland Departments together with community input.

Yours sincerely

A handwritten signature in black ink, appearing to be "Clare Smith".

Clare Smith

A/Information Commissioner

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Office of the Information Commissioner
Queensland

Model Protocols
for
Queensland Government Departments
on
Reporting to Ministers and Senior Executive on Right to Information and
Information Privacy Applications

1. Purpose

- 1.1. The purpose of these protocols is to provide a performance standard for maintaining the independence of Right to Information and Information Privacy decision-making during briefings of Ministers, ministerial staff and senior executive.

2. Application

- 2.1. These protocols constitute a performance standard under section 131 of the *Right to Information Act 2009 (RTI Act)* that:
- 2.1.1. applies to departments of government declared under section 14 of the *Public Service Act 2008*;
 - 2.1.2. applies to Ministers and ministerial staff members; and
 - 2.1.3. supplements the *Protocols for communication between ministerial staff members and public service employees*.

3. Effective date

- 3.1. These protocols take effect on 15 April 2013.

4. Context and principles

- 4.1. The Queensland Government operates in accordance with the Westminster system of responsible government.
- 4.2. Governments are responsible collectively to the community through the electoral process and are supported by an independent public service. Ministers are responsible individually to Parliament for the administration of their portfolios.
- 4.3. Directors-General are responsible for the delivery of their departments' services and are accountable ultimately to the Premier, although they report to their responsible Minister on a day-to-day basis.
- 4.4. Departments are responsible for giving independent and apolitical advice to assist the government and the Minister with decision-making.
- 4.5. The RTI Act and *Information Privacy Act 2009 (IP Act)* are transparency and accountability measures. Directors-General are responsible for decision-making on access applications made to their Department.

- 4.6. In practice, Directors-General usually delegate RTI and IP decision-making powers to departmental officers.¹ Even when powers are delegated, Directors-General will need to be kept informed of significant decisions.
- 4.7. Ministers are entitled to be briefed on access applications² made to the Department under the RTI or IP Acts insofar as they are relevant to the Minister's responsibilities. The privacy obligations in the IP Act concerning storage, use and disclosure of such information apply to the Minister.
- 4.8. Under the RTI and IP Acts, it is an offence to direct a person to make a decision the person believes is not the decision that should be made.³ It is also an offence to direct an employee or officer of the agency or Minister to act in a way contrary to the legislative requirements.⁴
- 4.9. The RTI and IP Acts expressly set out how an access application is to be processed and the grounds on which decisions to give or refuse access must be based.⁵ The RTI Act explicitly states that decision-makers are required not to take account of factors such as possible embarrassment to the Government or loss of confidence in the Government.⁶

5. Protocols

- 5.1. Ministers and Directors-General may establish reporting processes for being informed about RTI and IP access applications.
- 5.2. If reporting processes are required, the scope and purpose should be confirmed in a written policy.
- 5.3. Where processes require particular types of applications to be reported on, the criteria for identifying applications should be clearly defined.
- 5.4. Generally, reporting would be limited to applications where giving access to information will require the Minister or Department to prepare for public debate.
- 5.5. The written policy and any related correspondence should make it clear that the reports are for information only and note the offences relating to giving direction in the RTI and IP Acts.
- 5.6. Reports should be made to the Director-General. The Director-General should determine further recipients of the report on a need-to-know basis consistent with the IP Act.⁷
- 5.7. The content of the report should be limited to procedural matters such as statutory timeframes, the scope of the application, and a summary of the factors favouring disclosure or non-disclosure of the information in the public interest.
- 5.8. Any inspection of documents containing sensitive information, such as personal health information, should be limited, especially where such documents are not considered by the decision-maker as suitable for release to the applicant.
- 5.9. If further background briefing is required on the operational issues subject to the access application, the Minister or Director-General should request separate briefing on these matters from the responsible operational area through the usual internal and Ministerial briefing systems.

¹ The Premier advised Parliament on 13 November 2012 that all Ministers have directed a person within their Departments to deal with access or amendment applications made to the Minister.

² Briefs could also be provided on related matters such as internal and external reviews or appeals.

³ See sections 30 and 175(1) of the RTI Act and sections 50 and 184(1) of the IP Act.

⁴ See section 175(3) of the RTI Act and 184(3) of the IP Act.

⁵ See sections 44 and 47 of the RTI Act and sections 64 and 67 of the IP Act.

⁶ See Schedule 4, Part 1 of the RTI Act: Factors irrelevant to deciding the public interest.

⁷ Information Privacy Principles 8, 9 and 10 and National Privacy Principle 2 deal with secondary uses of personal information held by agencies. Departmental RTI and IP reporting processes will need to comply with the relevant principles.

- 5.10. In circumstances where the Director-General disagrees with a proposed decision, the Director-General should make the decision.
- 5.11. In the interests of open discussions of public affairs, the Director-General should consider exercising the discretion to release information even where the information could lawfully be withheld.⁸
- 5.12. Proper records of RTI and IP reports and any related correspondence or discussion must be made and kept in accordance with section 7 of the *Public Records Act 2002*.
- 5.13. If a Department has a policy on RTI and IP reporting processes, the policy must be made available under section 20 of the RTI Act. In the interests of transparency, the policy should be published on the Department's website.
- 5.14. RTI and IP reports should be managed separately from information retrieval processes and liaison between RTI and IP units and operational custodians of information. Requests for information from operational areas should include:
- 5.14.1. guidance on the pro-disclosure bias, relevant and irrelevant considerations and exemptions;
 - 5.14.2. an invitation to provide additional contextual information to ensure accurate interpretation;
 - 5.14.3. a prompt to consider providing access to the information administratively; and
 - 5.14.4. a clear statement about the offences relating to directions in the RTI and IP Acts.
- 5.15. Processes for RTI and IP reports must be managed in a manner which does not impact on statutory timeframes. RTI and IP reporting is not a sound basis on which to ask an applicant for further time to consider an application and make a decision about access.

6. Support to public service employees and ministerial staff members

- 6.1. Directors-General should provide ongoing support to staff (including reinforcing among senior executive their responsibility to provide support to their staff) to create a culture of openness and respect for the independence of RTI and IP decision-makers.
- 6.2. Public service employees should initially discuss any perceived breach of these protocols with their Senior Officer or Director-General. The Director-General should, if necessary, raise significant concerns with the Minister.
- 6.3. Ministerial staff members should initially discuss any perceived breach of these protocols with their Principal Adviser. The Principal Adviser should refer significant concerns where necessary to the Director-General.
- 6.4. If a public service employee or ministerial staff member is unable to raise their concerns within the relevant line of management, or is not satisfied with the response, the employee or staff member can raise the issue with another senior manager or seek advice on other internal or external integrity processes.

7. Assistance

- 7.1. The Office of the Information Commissioner offers an enquiry service on the operation and application of Queensland's Right to Information and Information Privacy legislation:

- Telephone: (07) 3234 7373
- Fax: (07) 3405 1122
- Email: enquiries@oic.qld.gov.au

⁸ See section 44(4) of the RTI Act and section 64(4) of the IP Act.

OVERSIGHT MEETING WITH THE OFFICE OF THE INFORMATION COMMISSIONER

March 2013

WRITTEN RESPONSES TO QUESTIONS ON NOTICE

Complaints

In the State Budget for 2012-13, the following were listed as the major deliverables for the OIC:

- further online training courses to support public sector practices;
- whole of government briefing practices model;
- in partnership with ANZSOG (Australia and New Zealand School of Government), develop transparency tools for public sector managers to improve efficiency, effectiveness, economy and integrity;
- timely external review; and
- increased resources for the community as a demand management strategy.¹

1. Would you please provide an update on the OIC's progress against these deliverables?

- further online training courses to support public sector practices

OIC is delivering three new online courses in 2012-13 financial year:

- Information Privacy for Queensland health agencies;
- Right to Information Act—general awareness; and
- Information Obligations for public sector employees.

The *Information Privacy for Queensland health agencies* course was made available in early March 2013. This course deals with the important obligations of Queensland Health and Hospital and Health Services under the *Information Privacy Act 2009* (Qld) (IP Act). The course shows how to apply the privacy principles in the health public sector environment and covers: what is privacy and personal information, the National Privacy Principles, exemptions, developing a privacy policy and dealing with privacy complaints.

The content for the *Right to Information Act—general awareness* and the *Information Obligations for public sector employees* courses has been developed and provided to the service provider for incorporation into the online learning environment. OIC has provided feedback on drafts received and is on track to launch these two courses in the 2012-13 financial year.

In addition to these three courses, OIC is also currently finalising the content for three detailed online training courses on processing and making decisions about applications to access documents under both the *Right to Information Act 2009* (Qld) (RTI Act) and the IP Act. The online courses will replace the current provision of quarterly face-to-face training for access decision-makers through a two-day intensive session. OIC is also developing content for a course on dealing with privacy complaints. Feedback indicates that agencies often identify an urgent need for training due to turnover or unexpected leave, and greater flexibility is required

¹ State Budget, Service Delivery Statement, 2012-13, page 62.

to complete the training in a way that suits operational requirements. Online training addresses such needs and avoids travel costs for OIC and attendees. These courses are expected to be available in the first half of the 2013-14 financial year.

Since May 2012, 2,428 public servants and interested members of the community have enrolled in the first online course developed: *Information Privacy Act—general awareness*. Enrolments have been received from both metropolitan and regional areas. OIC online training courses are free for the first 12 months, followed by a \$5.50 fee per enrolment. A Learner Management System allows authorised users in agencies to generate a range of reports for compliance and administrative purposes.

Online training courses are low-cost, flexible and accessible for regional centres and the public sector as-a-whole. The online courses are supplemented by face-to-face information sessions, live webinars, presentations on specific topics, and tailored courses including:

- Training for staff of the Lockyer Valley Regional Council in September 2012 on Right to Information and Privacy;
- Training for the Local Authority Revenue Management Association in Coolumb, Sunshine Coast in October 2012 on Right to Information and Privacy;
- A presentation at the annual Environmental Health Australia Conference at the Gold Coast in November 2012 on privacy and public health complaints;
- A tailored course for local governments from across Queensland in February 2013 on negotiation skills;
- A presentation at the Corporate Planning, Performance and Governance Village Forum in Townsville in March 2013 on privacy and CCTV;
- A presentation to the Institute of Internal Auditors in March 2013 on Right to Information; and
- A webinar on the self-assessed electronic audit tool in March 2013.

- **whole of government briefing practices model;**

Briefing on contentious access applications has always required careful balancing between Ministerial responsibility and public sector accountability for its statutory decision-making role. This issue has been the subject of reports and investigations across many Australian jurisdictions and OIC has observed a range of RTI and IP briefing practices during agency specific compliance reviews.

Model Protocols for Queensland Government Departments on Reporting to Ministers and Senior Executive on Right to Information and Information Privacy Applications were finalised and sent to all Ministers and Directors-General on 15 February 2013. The protocols are also published on the OIC website. The protocols constitute a performance standard under section 131 of the *Right to Information Act 2009* and take effect from 15 April 2013.

The model protocols aim to balance the need to protect the integrity of RTI and IP decisions and individuals' privacy with the need for appropriate reporting to Ministers and Directors-General. The protocols offer high level but practical guidance on what OIC considers is good practice in RTI and IP briefing processes. Implementation of the protocols by agencies will be reviewed as part of OIC's ongoing performance and monitoring program.

The protocols were developed after extensive consultation. As far as OIC is aware, these protocols are the first of their kind to be developed in any jurisdiction.

- **in partnership with ANZSOG (Australia and New Zealand School of Government), develop transparency tools for public sector managers to improve efficiency, effectiveness, economy and integrity;**

OIC is using the transparency papers to support open government.

A number of the tools that OIC was intending to develop focussed on stimulating the proactive disclosure of government held data. The need for such tools has been reduced by the Open Data Reforms led by the Department of Premier and Cabinet (DPC). OIC has redirected its resources to providing advice and developing practical tools to support the implementation of the Open Data Reforms. Key tools include three new guidelines on:

- Publishing datasets and privacy;
- Publishing datasets and de-identification techniques; and
- Publishing datasets and risk assessment.

OIC is contributing significantly to the Open Data Reforms as privacy is one of the two main considerations for agencies in their publication of datasets – the other being commercial confidentiality. OIC is a member of the Open Data Senior Officers Working Group and has provided advice on key aspects of the reforms. The OIC has released an information sheet titled, “Top 10 Privacy Myths Busted” that promotes the release of information and addresses misconceptions about privacy principles being a barrier to data publication.

Also, OIC has used the four transparency papers published in July 2012 as a basis for providing advice and making submissions that highlight evidence that public sector information can be used strategically to achieve the goals of effectiveness and efficiency in a range of aspects of government business.

- **timely external review**

OIC continues to resolve matters in a timely manner. In the first 6 months of this financial year, 215 applications have been resolved. Each external review file is closely monitored to ensure that it is being handled in as expeditious a manner as possible. Any reasons for delay are identified early and action taken to overcome them. There are always some matters that take longer to finalise due to a variety of factors that cannot be avoided including the:

- attitude of parties;
- volume of documents to be considered;
- complexity of the issues; and,
- involvement of third parties in the external review.

Other factors identified as impacting on timeliness are turnover of temporary staff within OIC and delays in responses from agencies and third parties to OIC requests. Nevertheless, OIC is confident it will meet its performance targets for this financial year.

- **increased resources for the community as a demand management strategy.²**

OIC has published a number of resources for the community and frontline officers to raise awareness and understanding of the operation of RTI and IP legislation in 2012-13. These Information Sheets, as well as providing useful information to the community, also seek to manage demand by clearly informing the community about:

² State Budget, Service Delivery Statement, 2012-13, page 62.

- how specific information can be accessed without resorting to a formal access application process;
- why specific types of sensitive information are not released under the RTI Act or IP Act;
- why access applications for such information are not likely to be successful; and
- the role of OIC and what can realistically be achieved using the external review process.

Community Information Sheets published to date include:

- Person recorded as birth father in agency documents - a guide for applicants;
- Justice Examination Order documents - a guide for applicants;
- Applications for legal and court-related documents;
- The role of OIC's External Review team – a guide for applicants;
- Non-existent or unlocatable documents - a guide for external review applicants;
- Exempt information: Crime and Misconduct Commission investigation - a guide for applicants; and
- Accessing my own medical records.

In addition, OIC continues its efforts to promote understanding of right to information and privacy rights and responsibilities in the community including in regional centres. Examples of these efforts include:

- rewriting OIC's privacy 'counter top' privacy brochure to more clearly set out the legitimate uses of personal information by government and complaint rights;
- modifications to OIC's website to make information resources specifically designed for the community more prominent and easily located;
- input into and keynote presentation at the launch of the Police Citizen Youth Centre's Seniors Online Security Program;
- launching a Protecting Your Online Reputation Teaching Module to raise awareness among Queensland senior secondary school students about privacy in the information age; and
- presenting on identity theft at the Burdekin Crime Prevention and Community Safety Conference in Ayr, North Queensland in September 2012.

Performance

2. In 2011-12, the OIC exceeded many of its service standards targets (Annual Report, page 3). For example, performance against the service standard 'percentage of reviews resolved informally compared to reviews resolved by written determination' exceeded the target of 75% with 88%. Likewise, the OIC obtained 100% against a target of 75% for the 'percentage of agencies satisfied with the information and assistance provided from the OIC'.³ Given these results, and results of previous years, has the OIC reviewed its service standards and targets for 2012-13? What changes, if any, has the OIC made to the service standards or targets.

OIC reviews and monitors its performance against its service standards throughout each year. The budget process requires the preparation of the Service Delivery Statement. OIC also sets its strategic performance standards in the preparation of its Operational Plans. There is ongoing monitoring of the performance of each unit to identify if it may not meet its targets and timeframes.

OIC gave detailed consideration to each service standard target and whether it should be changed. It was considered that even though OIC had exceeded its performance targets in

³ State Budget, Service Delivery Statement, 2012-13, page 63.

some categories,⁴ much of this success was due to one-off implemented efficiencies and temporary resources. It was determined that it would be premature to change these targets and service standards to any great extent while there are a number of external factors that are impacting of OIC's service delivery. These factors include:

- the volume of applications for external reviews;
- agency RTI/IP resourcing;
- machinery of government changes;
- legislative review; and
- the strategic review of the OIC.

In particular, OIC does not have a permanent budget solution and can only employ temporary staff to address demand. In these circumstances, it is not appropriate to make substantial and ongoing changes to these performance standards.

However, OIC has revised its service standards for privacy complaints and agency satisfaction levels regarding information and assistance provided by the Office. Agency satisfaction levels regarding information and assistance provided by the Office have been consistently high (96% in 2010 -11) and an increase in the service target from 75% to 80% was considered achievable within current resourcing.

The lower number of privacy complaints has also meant that the original measures were not producing meaningful and relevant data. With the benefit of three years' experience dealing with privacy complaints, OIC has proposed new standards for OIC's performance in this area. OIC will set a 14 day "mean average day to make a decision to accept a privacy complaint" and will set a 90 day target as "mean average days to finalise an accepted privacy complaint."

These revised standards have been approved by the Department of Premier and Cabinet and Treasury and will come into force on 1 July 2013.

- 3. In 2011-12, the OIC received 404 applications and closed 457 applications (which included a backlog of applications on hand at 30 June 2011).⁵ The target for file closures for 2011-12 was 300. In 2011-12, this 'record number' of file closures was attributed 'primarily to increased temporary resources, capitalisation on improved efficiencies in work practices and the economy that comes from retained expertise due to low turnover and stable team structures' (Annual Report, pages 17-18). How many applications is the OIC expecting to finalise this financial year and how will this be achieved?**

It is anticipated that OIC will finalise between 400 and 430 matters this financial year. This figure is in line with the previous years' high finalisation rates. As noted, 215 matters had been closed at 31 December 2012. The anticipated closures for the 2012-13 financial year will be achieved through a continued focus on early resolution, efficient work practices and the employment of temporary staff.

- 4. Please provide an update on applications and privacy complaints received by the OIC for the period 1 July 2012 to 30 December 2012. In your response, please include:**

- **numbers received;**

External review applications received – 228

Privacy complaints received – 26

⁴ Examples include the percentage of reviews resolved informally target 75% actual 88%; the percentage of agencies satisfied with the information and assistance provided from the office target 75% actual 100%.

⁵ State Budget, Service Delivery Statement, 2012-13, page 64; Annual Report, page 17.

- **numbers finalised;**

External review applications finalised – 215

Privacy complaints finalised – 25

- **proportion of reviews resolved informally;**

Proportion of external review applications resolved informally – 83%

- **number of written decisions made by the OIC;**

Written decisions made in this period – 37

- **number of open reviews more than 12 months old;**

At 31 December 2012, there was one open review older than 12 months. This review has subsequently been finalised.⁶

- **privacy complaints outcomes;**

Declined to deal with – 19

Discontinued – 1

Mediated – 1

Not mediated – 4

- 5. As at 30 June 2012, the OIC had 2 applications more than 12 months old.⁷ Have these been finalised? What is the OIC's projection this current financial year for open reviews more than 12 months old at year end?**

The 2 applications that were older than 12 months at 30 June 2012 have been finalised. OIC anticipates that there will be no matters older than 12 months at 30 June 2013.

Two related applications were at risk of not being resolved within 12 months and are a good example of why some matters take longer. Initially the agency released no documents to the applicant. OIC In the course of considering the review convinced the agency to release over 1000 documents to the applicant. However, as a result of this, the applicant has now identified further documents that should be considered. OIC's ability to finalise the matter is dependent on the agency concerned locating the further documents and advising whether the documents in question can be released.

- 6. What do you see as the biggest challenge in the next 12 months for the OIC?**

OIC is confident that it will be able to perform its present statutory functions and obligations in an efficient and effective manner over the next 12 months. It expects however to have less

⁶ This is further discussed later in response to Question 5

⁷ Annual Report, page 3.

timely finalisation of complaints and external reviews and will need to reprioritise and target its performance monitoring and agency and public awareness activities.

It is recognised that over the next 12 months there will be a number of events that will impact on the OIC. The extent of these impacts is not known at this point in time. The following have been identified as presenting the biggest challenges to the OIC over the next 12 months.

Budget uncertainty with no decrease in applications for external review

In the past 3 years, the OIC has absorbed the resource impact of new legislative functions through a number of measures that have made it more efficient. It is not expected that many more efficiency measures can be found in the short term.

OIC has been in consultation with the Attorney-General and Queensland Treasury in the course of the budget process and is keen to have a decision made as to whether its carryover/retention of cash reserves of \$0.4m will be accepted as a permanent component of its budget.⁸ Without a firm decision being made, OIC has only been able to hire a number of staff on a temporary basis. An increase in staff turnover with temporary staff obtaining permanent positions outside OIC has impacted on OIC resources.

The fiscal environment also impacts on agency RTI/IP Unit resources and their priorities. At least anecdotally, agencies have indicated that a lack of resources is affecting their ability to process access applications in a timely and effective manner. Consequently this may bring about an increase in external reviews and privacy complaints received by the OIC. Also the timeliness of the external review is impacted as agencies seek extensions of time in which to search for documents and provide submissions. External review staff have been asked to ensure that requests for extensions by agencies are accurately recorded so that any trends in delays can be identified.

Timeliness is the major cause of applicant dissatisfaction with the RTI and IP process. Failure to meet community expectations undermines their confidence in the RTI and IP system.

Possible legislative changes to agency and OIC processes and procedures

As the Committee is aware, a review of the RTI and IP Acts is being conducted by the Department of Justice and Attorney-General (DJAG) as the agency with administrative responsibility for the legislation. OIC wrote to the then Director-General of the Department of Justice and Attorney-General on 8 June 2011, recommending specific issues be investigated during the course of the review.

With the benefit of almost two years further experience in the administration of the legislation, OIC provided the Attorney-General and Minister for Justice with a more targeted list of issues for consideration on 15 March 2013. The issues recommended for consideration include:

- consolidating the access applications under one Act to reduce red tape;
- developing a simple and effective framework for privacy complaints;
- applying the RTI Act to contracted service providers;
- mechanisms to assist in managing demand for external review;
- the ability to remit external reviews back to the agency; and
- streamlining legislative processes and increasing certainty.

⁸ Queensland Treasury has recommended that OIC seek carry forward of the \$0.4m funds for the continued retention of temporary staff pending the outcome of the legislative review.

OIC notes that the Committee recommended in its Report No. 7 of August 2012:

“The Right to Information Act 2009 be amended to allow the publication of the name of a person declared by the Information Commissioner to be a vexatious applicant.”

The OIC further notes the Government has agreed to make such an amendment.⁹

It is expected that a Discussion Paper will be released soon seeking comments or submissions on key issues and challenges raised by the legislation.¹⁰ It is not known how long the consultation period will be for, but it is expected that the OIC will need to allocate resources to responding to the Discussion Paper and providing submissions to any proposed amendments.

Any legislative changes introduced as a consequence of this review will impact on the resources of the OIC. While it is hoped that some amendments will assist both agencies and the OIC deal with access applications more efficiently there will inevitably be a shorter term impact on OIC resources. This will include such things as:

- revising information sheets and guidelines;
- training agency and OIC staff;
- public education activities; and
- changes to information and case management systems.

Commencement and completion of a strategic review of the OIC

The impact of the strategic review is discussed in response to Question 27.

- 7. In 2011-12, the OIC achieved its target of 90 median days to finalise an external review. While the target was achieved, this is an increase compared to the previous financial year of 77 days (Annual Report, page 17). Has there been any analysis as to why the time taken to finalise an external review increased compared to the previous year? Is this actively monitored by the OIC?**

OIC monitors timeliness on individual matters through its case management system and the management and supervision arrangements it has in place. A number of factors can impact on timeliness including the volume of documents, the complexity of the issues (both legal and otherwise), the involvement of third parties, the ability of the parties to respond in a timely manner and the volume of other files a review officer has to deal with. Analysis of the case management system shows that the most common reason given by OIC staff for OIC delay in the 2011-12 financial year was the pressure of other files.

For the period 1 July 2012 to 31 December 2012, the median days taken to resolve a file was 57 days. It is to be expected that the median days will be lower in the first six months of the year as it reflects only the matters that are more easily resolved. Over a twelve month period, taking into account the more complex and lengthy matters, the figure may well be higher. It is anticipated however OIC will achieve its 90 median days target for the 2012-13 financial year.

⁹ Government 's Response to Recommendation 1 of the Legal Affairs and Community Safety Committees Report No. 7 Oversight of the Office of the Information Commissioner dated 1 November 2012.

¹⁰ Attorney-General quoted in Courier Mail 16 November 2012.

Privacy

- 8. In 2011-12, it is reported that a large proportion (32%) of privacy complaints failed to meet the technical requirements of a privacy complaint under the IP Act (Annual Report, page 25). One of the steps reported to be taken by the OIC to 'remedy this deficiency' is the redesign of its online form requiring complainants to complete a jurisdiction checklist (page 25). What other steps is the OIC taking and what impact, if any, have these steps had? How does this percentage compare with other jurisdictions?**

The predominant reason for OIC declining to accept privacy complaints in the 2011-12 financial year was the complainant's failure to meet the technical requirements of section 166(3) of the IP Act. 32% of all complaints lodged in this financial year failed to meet these requirements.

An 'out of jurisdiction' factor is common to complaint handling bodies. In the 2011-12 financial year, the Office of the Queensland Ombudsman received over 21,000 contacts of which 56.5% were out of jurisdiction with that Office accepting 39.5% of its contacts as complaints. The Anti-Discrimination Commission Queensland's out of jurisdiction rate for the 2011-12 financial year was 43%.

Similarly, every privacy jurisdiction has the capacity to decline to deal with privacy complaints lodged with it. In the 2011-12 financial year, the Office of the Victorian Privacy Commissioner 'declined to entertain' 54.5% of privacy complaints lodged with it. The out of jurisdiction rate for the Office of the Australian Privacy Commissioner in the 2011-12 financial year was 16%. This latter rate presumably reflects the maturity of the Commonwealth jurisdiction which is now entering its 25th year.

To try and remedy Queensland's 'section 166(3) error rate', in 2012, OIC changed its online forms so that a complainant had to affirm that they had previously made their privacy complaint to the government agency and allowed it the period of 45 business days to deal with it.

While it has been less than a year since these forms were revised, for the period 1 July 2012 to 28 February 2013, for complaints made using the online form, the number of complaints where the complainant had failed to first contact the agency had declined significantly – from 75% to 14%.

OIC has taken a number of other steps to assist in improving the making and handling of privacy complaints. OIC recognises that it has an educative role in privacy and privacy complaints and is continuing efforts to improve complaint processes both within OIC and government agencies through the following:

- The creation of an online training course specifically about dealing with privacy complaints.
- Undertaking a review of the extent to which privacy is a consideration in an agency's general complaint handling practices and processes. This review will necessarily look at the extent to which complaint handling staff are educated on privacy issues generally and privacy complaints specifically.

OIC has also rewritten its 'counter top' privacy brochure to provide a more focussed emphasis on complaint processes. Providing privacy complaint information to agency practitioners is one of the services that will be explored through OIC's management of the RTI/IP Officers Network Meetings.

9. The OIC previously advised the Committee that privacy complaints are increasing and that if the current rate of receipt continued, the number of privacy complaints would be comparative with more established jurisdictions (Answers to Questions on Notice, 10 February 2012). Has this expectation been realised? Does this take into account the large proportion of complaints which are not accepted by the OIC?

Privacy complaint numbers are slightly down for the first half of the 2012-13 financial year compared to the same period for the 2011-12 financial year. For the period 1 July 2011 to 31 December 2011, 31 privacy complaints were lodged with OIC whereas for the period 1 July 2012 to 31 December 2012, 26 privacy complaints were lodged with OIC. The figures include the complaints lodged with OIC, which after investigation are not accepted by OIC. The figures also include complaints which are accepted by OIC but withdrawn before the complaint process is finalised. This practice mirrors that of the other privacy complaint jurisdictions.

OIC is not able to comment on why there has been this slight drop in privacy complaint numbers.

Appeals

10. During 2011-12, five appeals were made to QCAT. At the time the Annual Report was written, all five appeals were pending (page 20). Can you please briefly outline the issue in these cases and advise where there has been any progress in their finalisation?

Five appeals commenced in 2011-12, three have now been finalised.

QCAT has upheld OIC's decision in all of the finalised cases. Details of all five matters are set out below:

Gordon Resources v State of Queensland [2012] QCATA 135

Gordon Resources was seeking information about royalty returns lodged by BHP-Billiton Mitsubishi Alliance Coal Operations Pty Ltd (BMA) with the Department of Employment, Economic Development and Innovation. BMA and the applicant were co-owners of particular land and the royalty returns were to be used by Gordon Resources to verify the accuracy of royalty payments made by BMA to them.

After considering the public interest balancing test, OIC determined to release some of the documents (figures regarding the total of royalties payable to all relevant private land holders presented as aggregate amounts) but refused access to others (tonnage revenue, revenue, applicable royalty rates, port charges and rail freight costs of BMA).

In considering the public interest the Information Commissioner considered factors such as open discussion and accountability; availability of information regarding royalty payments elsewhere; the administration of justice as factors favouring disclosure. Factors favouring non-disclosure included application of secrecy provisions in other legislation, the impact of disclosure on BMA's business, commercial or financial affairs and possible impacts on other private land holders' business, commercial or financial affairs. Gordon Resources appealed to QCAT and BMA was a party to the appeal as well.

QCAT found there was no error of law by OIC and the appeal was dismissed.

7G5BAL v Information Commissioner and Amanda Flynn Charity

The Amanda Flynn Charity applied to the Crime and Misconduct Commission (CMC) seeking access to various documents relating to a third party's employment. Upon consultation, the third party objected to disclosure. The CMC granted full or partial access to all but a small number of documents. On review, the OIC decided disclosure of the documents would not be contrary to public interest. The nature of the information in issue was routine work information such as an application for a job, an induction checklist, confidentiality agreement and curriculum vitae. The third party has appealed to QCAT.

QCAT is determining the matter on the papers and has yet to make a final decision.

BL v Information Commissioner and Department of Communities [2012] QCATA 149

The applicant was seeking access to the name of the person listed as the applicant's birth father in adoption records (putative father information). The *Right to Information Act 2009* and the *Adoption Act 2009* prohibits disclosure of such information. As the legislation makes the information exempt, there is no scope to consider submissions about public interest.

QCAT considered OIC's interpretation of the law to be correct and dismissed the appeal.

Underwood v Department of Communities and Minister for Housing and Communities and Information Commissioner

The applicant was seeking review of four decisions by the Department and Minister relating to information about her public housing tenancy. The Right to Information Commissioner decided not to further deal with the applications as they were vexatious.

The Commissioner found firstly, the applications were productive of serious and unjustified trouble and harassment and were therefore vexatious and secondly, that continuing with the applications would cause unfairness to the Department and Minister and is not a proper use of either their resources or the resources of the OIC.

The applicant appealed the decision. This matter has been set down for oral hearing before QCAT on 28 and 29 May 2013.

Richards v Information Commissioner and Gold Coast City Council [2012] QCATA 177

This matter involved consideration of the exemption which prevents disclosure of documents where such disclosure would lead to a person being subjected to a serious act of harassment or intimidation. The applicant had a long running dispute with the Council about the destruction of a dangerous dog. It was submitted that the applicant had engaged in a course of conduct including harassment of council staff and councillors by phone and the making of implicit and explicit threats of violence against staff and councillors. The communication by the applicant ranged from rude and abusive to the actual making of threats. Council had put security plans in place for specific individuals.

The Information Commissioner was satisfied that the conduct of the applicant in the relevant phone calls induced fear in the persons targeted and determined that the release of the documents would reasonably be expected to lead to a person being subjected to a serious act of harassment or intimidation.

The appeal was dismissed by QCAT which found the findings of the Commissioner were "amply justified".

Staffing

11. As part of the State Budget for 2012-2013, it was estimated that the OIC will have 33 FTE staff. This is a decrease of 1 FTE compared to 2011-12.¹¹ Please advise how many staff the OIC currently employs and whether it anticipates any change in its staffing numbers during the year and the reasons for any change. In your response, please provide a breakdown of all staff (permanent and temporary) by gender and classification level.

Level	Male FTE	Female FTE
SES3		1
SES2	1	1
SO-3		0.9
SO-1		3
AO8	3.8	3
AO7	1.6	5.7
AO6	2	9
AO5	1	
AO4	0.8	0.8
AO3	1	2
Totals	11.2	26.4

Permanent and temporary FTE numbers as at date answers submitted

OIC currently employs the equivalent of 37.6 full-time staff.¹²

At present, OIC has 4.5 temporary staff above establishment FTE's. 2.5 of these temporary positions are in External Review and 2 temporary staff are employed on a short term basis in the Assistance and Monitoring area to assist with OIC website enhancements.

As reported at previous meetings with the committee, the Office has experienced a significant increase in the number of external review applications received since the introduction of the RTI and IP Acts in 2009. As mentioned earlier, for the past three years, approval has been granted to carry forward funding from surplus cash reserves to meet the costs of employing additional temporary staff to meet this increased demand.

¹¹ State Budget, Service Delivery Statement, 2012-13, page 63; Annual Report, page 10.

¹² Four permanent staff members are currently on maternity leave and one staff member is on long leave without pay. Three permanent full-time staff members have returned with part-time employment arrangements in 2012-13 following maternity leave. Temporary employees have been engaged to backfill these vacancies.

12. During 2011-12, the OIC spent approximately 1.23% of employee salaries on training and development.¹³ The Annual Report states that this level is less than the 2% recommended by the last strategic review of the OIC but that the level 'was considered sufficient to maintain the skill and confidence level of staff'(page 11). How does this compare to other years, and what is the projection this year?

Year	Expended %	Amount expended \$	Staffing (FTE)
2006-07	4%	40,767	13.8
2007-08	2.6%	33,000	13.8
2008-09	2.7%	39,249	32.3
2009-10	2.5%	62,000	32.3
2010-11	2%	63,666	33.9
2011-12	1.23%	38,853	34.1
2012-13	0.6% (projected)	20,000 (projected)	33.1

OIC's projected expenditure for 2012-13 is \$20,000 or 0.6% compared with 1.23% the previous year. The OIC does not consider this reduction in expenditure has impacted on the skill level of its staff.

OIC has enjoyed stability of its permanent staff since 2009. This stability together with the delivery of identified development training in the preceding years has contributed to the reduction of expenditure in 2011-12.

Training is only given to the recent temporary employees where it is considered necessary for them to perform their duties.

OIC's core training for staff is provided both in-house and by external providers. External training involves attending courses on statutory interpretation, advanced government decision-making, legal professional privilege and alternate dispute resolution. Some of this training is provided by Crown Law online at no charge. OIC also conducts informal and in-house training sessions coordinated by staff on a range of topics and has a system for monitoring and reporting on legal developments. Each month two officers within the external review unit prepare a Legal Development Monitor that provides staff with a summary of OIC preliminary views and Decisions made in the previous month; informs staff of relevant legislative amendments and cases in other jurisdictions; and advises of any other RTI/IP developments that may be of interest to them.

OIC staff routinely access the same training and education sessions OIC provides for external agencies. Recent examples of this include OIC staff attendance at *Fast Track Negotiation Skills*, *Access Training for Decision Makers* and *How to deal with a privacy complaint* training sessions. Finally, OIC staff undertake OIC's online training courses as relevant to their duties.

¹³ Annual Report, page 11.

Complaints

- 13. In 2011-2012, the Queensland Ombudsman reported that it received 6 complaints about the OIC. Compared to the 2 years prior (where only 2 complaints were received in each of those years), this represents a 200% increase (Queensland Ombudsman, Annual Report 2011-2012, page 14). Please outline briefly the nature and outcome of these complaints and what actions have been taken, if any, to address the issues complained about.**

None of these complaints were raised with the OIC. OIC has been advised by the Queensland Ombudsman that all 6 complaints were declined.¹⁴ Three were considered out of jurisdiction; one related to an agency RTI decision-maker; one was regarded as not justifying an investigation; and one was regarded as premature and referred to another complaints entity. The Queensland Ombudsman further advised that he was not able to identify any pattern in these complaints or reason for the growth in complaints from previous years.

- 14. The OIC's Annual Report for 2011-2012 states (at page 24) that the office exceeded its target of finalising complaints within 90 days, achieving a median time to finalise a complaint of just four days. Has the OIC considered reviewing this target to make it a more effective measure when the median time is only four days?**

As discussed in response to Question 2, OIC has revised the privacy complaint reporting measures. As a consequence, from 1 July 2013, there will not only be different measures, but the measures will use the mean, rather than the median average.

- 15. The OIC's Annual Report for 2011-2012 notes (at page 25) that the number of privacy complaints received almost doubled when compared to the 2010-2011 financial year, and that "this indicates a growing awareness about privacy rights". Please outline briefly how this awareness is thought to have come about- via what medium/s is the general public gaining this new awareness?**

Privacy complaints numbers have reduced slightly for the 2012-13 financial year compared to the same reporting period for the 2011-12 financial year. For the period 1 July 2011 to 31 December 2011, 31 privacy complaints were lodged with OIC whereas for the period 1 July 2012 to 31 December 2012, 26 privacy complaints were lodged with OIC. OIC is continuing to promote privacy rights and obligations through:

- Online training modules.
- Community Information Sheets and Guidelines.
- Submissions on Queensland and National initiatives with privacy implications.
- Representation on working committees and network groups.
- Presenting at public forums on privacy issues.
- Engaging with the print, television and radio media on privacy matters.
- Publishing articles on privacy-specific issues for specialist journals.

OIC has responded to an increase in requests for privacy information on very focussed, specialist areas such as:

- Identity theft.
- Social media.
- De-identifying datasets.
- Environmental health complaints.
- CCTV footage.

¹⁴ Letter from Queensland Ombudsman to A/Information Commissioner 21 February 2013.

Reports and desktop audits

The OIC tabled five reports on reviews under the RTI Act or IP Act in 2011-12 (Annual Report, pages 12 and 29), with a sixth report tabled in September 2012.¹⁵ In relation to those reports:

16. What proportion of recommendations were accepted by agencies?

Agency-specific recommendations were made in the agency compliance review reports regarding Queensland Health, the Queensland Police Service and the Department of Transport and Main Roads; and general recommendations were made in the Camera Surveillance and Privacy Review. Queensland Health and the Department of Transport and Main Roads accepted the compliance review report recommendations. The Queensland Police Service advised that "all recommendations should be implemented subject to potential issues such as resource availability and interpretation".

17. How many of those recommendations have been implemented?

Implementation is confirmed through follow-up reviews. Implementation of recommendations for the Queensland Health and Queensland Police Service compliance review reports was required by late 2012. Follow-up reviews are currently in progress and the results are expected to be reported to Parliament in mid-2013. A follow-up review of the Department of Transport and Main Roads will be completed in 2013. Agency responses and action taken as a result of the Camera surveillance and privacy review is discussed in response to Questions 23 to 25.

18. Were there any overarching themes or trends?

Desktop audits of agency websites found that nearly all agencies had websites providing a great deal of information to the public, with the basic right to information and information privacy structures in place. There were common areas of shortfall in websites:

- Publication schemes could have included more significant, appropriate and accurate information, and disclosure logs could have included a larger proportion of documents released under the RTI Act.¹⁶
- Administrative arrangements for accessing information could have been given a higher profile, with greater prominence and visibility on websites, so that the legislative access application process is used only as a last resort.
- Agencies did not facilitate discovery of information by members of the community. For example, they generally failed to list information data sets (by publishing the required information asset register) or personal information holdings (required by the IP Act).

Agencies also had an uneven application of the requirements to provide advice about:

- the collection of personal information;
- the reason for collecting the information;
- authorisation or permission at law for collecting the information; and
- any routine disclosure of the information that might be made.

¹⁵ Report 3 of 2012-13: *Results of Desktop Audits 2011-12: Review of Publication Schemes, Disclosure Logs and Information Privacy Awareness in Departments, Local Governments, Statutory Authorities and Universities*

¹⁶ OIC notes that, from 22 February 2013, Departments and Ministers have a mandatory requirement to publish documents in a disclosure log unless specific exceptions apply. Desktop reviews of departments conducted in the last quarter of 2012-13 will give an early indication of compliance with the new requirements and will be reported in the next desktop aggregate report.

Consistent with the results of the 2010 self-assessed electronic audit, agency compliance reviews found that the proactive release of information and good management of personal information was done best by agencies with strong leadership that included information management alongside technology management in their agency's strategic plans, policies and procedures.

Also, the agency reviews have shown that agencies that consult with community stakeholders and interest groups about their information needs, have better initiatives for proactive release of information, particularly schemes for administrative release of information.

Agency reviews found that applications for information made under the legislation were generally handled in accordance with technical legislative requirements, with some non-compliances noted.

The key to improving the handling of applications for information, where the applicant would have had greater success and satisfaction, and the agency would have saved time and effort, was having the agency make early and regular contact with the applicant to ensure the scope of the application was clear and the applicant was kept informed on the progress of the application.

19. What are the key areas for agency improvement?

It is essential that agencies focus leadership efforts on building an organisational culture that favours proactive release of information and which is respectful of privacy. A positive organisational culture will lead to active management of information, identification of information that could be published, active efforts to find ways to make publishable information available, and business units that are responsive and service oriented when asked for information.

The Open Data Reforms led by DPC will encourage agencies to proactively publish data.

Agencies need to review the amount and type of information published and available for publication with a pro-release bias. This will increase the amount of significant, appropriate and accurate information on their websites, publication schemes and disclosure logs. Information data sets should be published in a format that allows members of the public to download the information and use it easily, for example, numerical data is better published in a spread-sheet than in a PDF document.

In addition, agencies need to publish lists of information holdings and develop and promote schemes for the administrative release of information, so that it is easy for members of the public to find out what information is held by an agency and to obtain that information. Agencies need to communicate effectively with access applicants to reduce red tape and processing costs and time for both applicants and agencies.

Information privacy considerations need to be built into agency operations, including strategic project management, procurement and tendering, building ICT systems, and designing procedures and forms. In this way, personal information will be managed appropriately as a matter of course during everyday business, rather than requiring remedial efforts to be applied after a system has been built.

20. What is the OIC's policy on follow up, in particular, an agency's implementation of recommendations made?

The performance monitoring and review work plan has different levels of follow up depending on the nature of the review undertaken and whether recommendations were made. For example, activity aimed at obtaining a broad view across all agencies, using self-reporting

methods; generate a snapshot of progress across the public sector, rather than a review report with recommendations.

Desktop audits examine publicly available information on agency websites and provide recommendations directly to each individual agency. Agencies are asked to respond within four weeks of receiving these reports. The recommendations have generally been accepted in full. Commonly, agencies will contact OIC to discuss strategies for implementing recommendations. Desktop audits are repeated regularly, for example, annually for departments and local councils. Implementation of the recommendations is assessed when the desktop audits are repeated. The results of the desktop audits for each year are aggregated and reported to Parliament every year in one overall report.

Issues reviews look at an issue across a sample of agencies and make general recommendations for the public sector. Depending on the issue, assessment of risk and priorities for performance monitoring resources, implementation of recommendations may be assessed through a range of OIC performance monitoring activities including: a specific follow-up review, specific agency compliance audits, desktop audits and self-assessment electronic audits.

Agency compliance reviews are an in-depth examination of individual agency's performance against the strategic and operational requirements of the legislation. These reviews are comprehensive. They examine policies and procedures, review a sample of application files, consult the agency's stakeholders in the community, and interview staff. This type of review is conducted for agencies assessed as high risk. The process of an agency review includes a follow-up review, which is usually conducted six to twelve months after the review has been completed. This gives the agency time to implement all of the recommendations. The extent of a follow-up review will vary depending on the nature and number of recommendations and assessment of risk. OIC will request a progress report from the agency and determine the appropriate methodology for the specific review. In some cases assessment of a detailed progress report and relevant documentation will be sufficient. In other cases a more comprehensive follow-up review will be conducted that is similar in methodology to the initial review, focused on the implementation of the recommendations. For example, the Queensland Police Service Compliance Review follow-up review included application file reviews, interviews, and examination of policies and procedures.

With regards to Report 2 of 2011-12: *Compliance Review: Queensland Health: Review of Queensland Health, Corporate Office, and Metro North and Metro South Health Service Districts' compliance with the Right to Information Act 2009 (Qld) and the Information Privacy Act 2009 (Qld)*:

- 21. It was stated that Queensland Health accepted all recommendations (page 1) and that the OIC would follow up on the implementation of the recommendations in 12 months (page 12). Can you please provide the Committee the outcome of this follow up?**

The follow-up review has commenced, with the initial step being to obtain a progress report from Queensland Health in late 2012. Queensland Health advised the OIC in December 2012 that Queensland Health's internal audit co-source partner PricewaterhouseCoopers was conducting an internal audit in 2013. Queensland Health suggested that it may be beneficial for that internal audit to incorporate a follow-up of the Compliance Review or for OIC to await the outcome of that audit before proceeding with the follow-up review. OIC officers met with officers performing the Queensland Health internal audit in January 2013 and have provided advice about testing the implementation of the recommendations to ensure the progress report resulting from the internal audit addresses all relevant aspects of the Compliance Review report.

This follow-up review has also been complicated by the creation of separate Hospital and Health Services for the two Health Service Districts that were included as part of the Queensland Health compliance review. OIC will assess the report from Queensland Health, review outstanding issues as considered necessary, and provide a follow-up review report to the Parliamentary Committee on completion of the review under section 131 of the RTI Act.

With regards to Report 3 of 2011-12: *Compliance Review: Queensland Police Service: Review of Queensland Police Service compliance with the Right to Information Act 2009 (Qld) and the Information Privacy Act 2009 (Qld)* (tabled 25 October 2011):

- 22. A number of suggestions or recommendations made by the OIC were reported to have been addressed by QPS, but not yet verified by the OIC (See for example, recommendation 15). Please advise what follow up review has been undertaken by the OIC in relation to all recommendations.**

A comprehensive follow-up review by OIC of the 28 recommendations commenced in late 2012 and is currently underway. OIC will provide a follow-up review report to the Parliamentary Committee on completion of the review in mid-2013 under section 131 of the RTI Act.

In Report 2 of 2012-13: *Camera surveillance and privacy: Review of camera surveillance use by Queensland government agencies and compliance with the privacy principles in the Information Privacy Act 2009 (Qld)*, it was the overarching finding of this review that 'Queensland public sector agencies have further work to do in identifying, managing and reducing existing privacy risks to the community associated with agency use of camera surveillance footage' (page 63). Given this report targeted 176 agencies (comprising departments, local governments, statutory authorities and universities):

- 23. How has this report been received at agency level?**

Agencies involved in the review were not asked to respond to the report's recommendations formally, which were aimed at providing general guidance across the public sector. However, in accordance with OIC's review procedure, agencies reviewed in-depth were given a copy of the draft report and an opportunity to comment on the findings. Each agency provided comments that were taken into account in the drafting of the final report.

- 24. How will the implementation of the recommendations be monitored?**

The review was less focussed on assessing agency compliance with the privacy principles in this area and more on shining a general spotlight on the interaction between the principles and CCTV administration. As the first of its kind, the broader agency survey was designed to provide a baseline measure for later reviews.

Implementation of the recommendations of the review by agencies will be monitored in a number of ways. Specific agency compliance reviews can monitor compliance with the privacy principles in relation to camera surveillance. Other opportunities to obtain information about compliance may be incorporated into other reviews or self-assessment audits.

OIC will also consider conducting a specific follow-up review approximately three years after the initial review, taking into account relative risks and priorities for performance monitoring resources at that time.

25. Have any changes occurred at agency level in response to this report? In your answer please provide some examples.

During the finalisation of the review, two of the five agencies that were the subject of the in-depth review informed OIC that they were revising or finalising their processes in response to the findings of the report. For example, the Department of Communities informed OIC that it was developing a *CCTV Privacy Guide* for staff to communicate the various obligations and issues arising from handling personal information collected by camera surveillance across the department. The revised processes were reflected in the final version of the review report.

At the end of last year, OIC was consulted by the Tablelands Regional Council who were installing CCTV for the first time and who wished to have a CCTV policy that was compliant with their obligations under the IP Act. The Council had carefully read the review report and in its draft policy had sought to address all the privacy issues that were set out in the report.

Early this year, OIC was consulted by an individual engaged by a consortium of Councils in the South East Queensland region to update their existing policies and practices in light of the findings of the review report. This consultation is ongoing.

A number of agencies have also contacted the OIC Enquiry Service seeking assistance with various aspects of implementing the recommendations of the report, including drafting appropriate collection notices for surveillance cameras.

In mid-March 2013, OIC was asked to speak on CCTV and Privacy at the *Corporate Planning, Performance and Governance Village Forum* in Townsville, involving local government from across Queensland. The Townsville City Council and James Cook University in Townsville were two of the five agencies selected for the in-depth review.

As a response to agency uncertainty on the record-keeping obligations of CCTV that was reported in the CCTV Review Report, the Queensland State Archives reviewed and then expanded and clarified their guidance material concerning this area.

26. What performance and monitoring activities are scheduled this financial year? In responding, please outline the analysis which the OIC undertakes to determine these activities.

OIC conducts a risk analysis every year in order to prioritise agencies for review. The OIC's approach to the design and targeting of performance and monitoring activities is based on an assessment of relevant data and information including:

- the nature or sensitivity of each agency's information and the consequences of potential breaches for the community;
- volume of requests for information and amendment of personal information processed by agencies through the legislative application process;
- annual reporting data from agencies (formerly FOI annual reporting data) and OIC data; and
- evaluation of previous review outcomes and the need for follow-up reviews.

The risk assessment is used by OIC to assist in selecting agencies and topics to be focused on in proposed reviews in a five year work program and annual business plan. An assessment of High Risk may reflect the greater consequences of non-compliance rather than likelihood of non-compliance. For example, due to the nature of its business, an agency may deal with very sensitive personal information, the inappropriate disclosure of which would have serious consequences for the community. Similarly, an agency that deals with a high proportion of the total access applications across the sector would be considered higher risk as, if application handling processes were deficient, the consequences for the community would be more widespread.

OIC also selects agencies for specific compliance audits or as part of issue themed review, where it considers good practices can be identified and profiled to improve the quality of practice in right to information and information privacy in Queensland government agencies.

Structural changes to agencies or demands on agency resources can influence selection of agencies for reviews. For example, the timing of desktop audits and selection of agencies for compliance reviews has been limited in the last financial year, due to machinery of government changes.

Demands on a range of agencies following natural disasters were also taken into account in recent years, with specific reviews postponed or reprioritised as a result.

Performance monitoring activities scheduled in 2012-13 are as follows:

- Report on Compliance Review – Department of Transport and Main Roads: Review of the Department of Transport and Main Roads' compliance with the RTI Act and the IP Act;
- Report on Camera Surveillance and Privacy: Review of camera surveillance use by Queensland government agencies and compliance with the privacy principles in the IP Act;
- Report on Results of Desktop Audits: Review of Publication Schemes, Disclosure Logs and Information Privacy Awareness in Departments, Local Governments and Universities;
- Compliance review of Department of Education, Training and Employment's compliance with the RTI Act and the IP Act;
- Follow-up review of Queensland Police Service implementation of recommendations of OIC Report on Compliance Review – Queensland Police Service: Review of the Queensland Police Service compliance with the RTI Act and the IP Act;
- Follow-up review of Queensland Health implementation of recommendations of OIC Report on Compliance Review – Queensland Health: Review of the Queensland Police Service compliance with the RTI Act and the IP Act;
- Streamline self-assessment electronic audit program with Government Statistician;
- Conduct second self-assessment electronic audit of Queensland government agencies;
- Develop online training about the OIC desktop audit tool for agencies;
- Commence review of the extent that privacy considerations are incorporated into agency complaint handling processes and procedures;
- Conduct individual and aggregate desktop reviews of local governments, GOCs, universities, departments and other public authorities;
- Commence agency compliance review of a regional council;
- Commence agency compliance review of a University;
- Develop audit tool for agencies; and
- Commence follow-up review of Department of Transport and Main Roads' implementation of recommendations of OIC Report on Compliance Review – Department of Transport and Main Roads: Review of the Department of Transport and Main Roads' compliance with the RTI Act and the IP Act.

Reviews

27. It is noted that the next Strategic Review is scheduled for 2012-13 FY (Annual Report, page 12). Operationally, what impact do you consider this review have on the OIC? Do you consider the OIC has had adequate consultation on the process of the review?

Section 186 of the *Right to Information Act 2009*, requires a strategic review of the OIC to be conducted within four years of the commencement of the section.

Both the Legal Affairs and Safety Committee and the Information Commissioner are required to be consulted about the terms of reference of the strategic review of the OIC and of the appointment of the reviewer.

The Acting Information Commissioner was provided with a copy of the draft Terms of Reference for her consideration and comment by letter dated 9 January 2013 received by OIC on 15 January 2013. The Acting Information Commissioner responded to the Attorney-General on 31 January 2012 advising that:

"Overall, the substance of the Terms of Reference appear to be comprehensive and appropriate for the conduct of the strategic review and I have no comments in this regard."¹⁷

It is considered that OIC was adequately consulted on the strategic review's terms of reference. OIC looks forward to contributing to the strategic review when it commences. It is understood that the review will begin in the new financial year and a report is expected within 3 months of its commencement.

The strategic review is to include a review of the commissioner's functions and performance of those functions to assess whether they are being performed economically, effectively and efficiently.

It is expected there will be an initial meeting with the reviewer to discuss the process and information requirements. Following on from this, it is anticipated there will be further meetings and interviews with staff. A range of documents and reports will need to be provided to the reviewer so that he or she can gain an understanding of the functions of OIC and its performance over the last 3 years. As required under the legislation, prior to finalising the report the Information Commissioner will be provided with a copy of the report and may provide comments to the reviewer within 15 days.

This strategic review necessarily will need to be resource intensive at various times throughout the 3 months period but it is expected it can be managed without diminishing OICs performance. Of course, the impact of the Strategic Review depends on its outcomes and recommendations. If its recommendations include fundamental changes to the functions, structure or operations of OIC this may be a very significant impact for the Office.

Community engagement

28. Page 27 of the OIC's Annual Report for 2011-2012 indicates that in 2011-2012 there was a drop in training activities concerning right to information and information privacy in Queensland Government agencies from 38 to 31 sessions, meaning there were 608 less participants gaining the assistance of this important training. Could you please explain the reduction in numbers and whether you consider there will be any adverse effect on the OIC due to the reduction?

Implementation of the new legislation in Queensland in 2009 created a heightened demand for training as government agencies sought to meet their information rights and responsibilities. This demand was evident as reported:

- 2009-10 OIC Annual Report – Training sessions 77 (target 30).
- 2010-11 OIC Annual Report – Training sessions 38 (target 30).
- 2011-12 OIC Annual Report – Training sessions 31 (target 30).

This downward trend suggests agencies have achieved a working level of knowledge and have transitioned from implementing to maintaining their information obligations. OIC has maintained the same number of detailed two-day Access Decision-Making Training for

¹⁷ Some references to legislative provisions and date corrections were raised directly with Department of Justice and Attorney General staff.

practitioners in the last 3 years. Similarly, there has been strong interest and participation in the Fast Track Negotiation Skills course in the implementation of this course across the sector over the past two years. Now, OIC is focusing on advanced training and resources to extend learning of the previous course participants.

Anecdotally, OIC has been made aware that some decision-makers are unable to participate in multi-day face-to-face sessions in 2012-13. OIC has consequently adapted its training delivery strategy to include self-paced online modules. Demand for OIC's first online course was very high. The *Information Privacy Act*-general awareness module, has received 2,428 enrolments since May 2012.

With the expansion of online delivery a reduction in face-to-face training sessions is not expected to adversely affect RTI and IP knowledge and skills within agencies. Conversely, OIC expects that providing low-cost, flexible and accessible training, particularly for regional centres, will ensure more people are trained across Queensland. Queensland government agencies are encouraged to incorporate, where possible, the general awareness online training courses into staff induction processes and annual compliance regimes. While online delivery will satisfy the majority of future training needs OIC will continue to offer face-to-face scheduled courses on a case-by-case basis allowing training resources to be targeted to specific priorities.

- 29. During the 2011-2012 financial year, the OIC reported that its website was improved with the aims of increasing usability and accessibility to resources and tools. Conversely, page 33 of the Annual Report for 2011-2012 indicates that there was a drop in website visits from 75,165 from the previous year to 64,173. Has the OIC investigated the reasons for the decrease in visits? How does the OIC monitor visits to the website and its effectiveness in providing assistance to the general public?**

Implementation of the new legislation in Queensland in 2009 created a heightened demand for resources and tools as government agencies sought to meet their information rights and responsibilities. This demand was evident as reported:

- 2009-10 OIC Annual Report – Website visits 97,404 (target 80,000)
- 2010-11 OIC Annual Report – Website visits 75,165 (target 80,000)
- 2011-12 OIC Annual Report – Website visits 64,173 (target 80,000)

This downward trend supports OIC understanding that many stakeholders have achieved a working level of knowledge and have transitioned from implementing to maintaining their information obligations.

OIC monitors visits to its website through the use of Google Analytics (GA). GA generates detailed statistics about a website's traffic and traffic sources. The OIC website also allows a user to submit feedback to OIC in relation to a specific web page, resource or tool. Website feedback is received frequently from the community and agencies through the Enquiries Service. OIC uses the GA information and feedback to continuously improve website usability and to increase the prominence of popular content such as the community Information Sheets, Guidelines and Decisions.

The Annotated Legislation is the cornerstone of OIC's knowledge management system. OIC is increasingly observing that decision-makers are incorporating information from the Annotated Legislation in their decisions or referring to the Annotated Legislation to support their reasons for decision. OIC is keen to further promote the Annotated Legislation and the other valuable resources it holds on its website. As a result, OIC continues to enhance its website to make it more user friendly with the main areas of interest clearly displayed and to make its information searches more intuitive. OIC will monitor the impact of these changes.